APPENDIX "A"

Opinion of the Trial Court Denying Motion for New Trial

THE COURT: This is a motion for a new trial. It was noted for hearing the last miscellaneous day, last Friday afternoon. At that time the Court was informed that there was delivered to the Court a brief and argument in writing by the moving attorney. The matter was adjourned to give the Court an opportunity to examine the argument and brief submitted. The Court has done that. The motion as filed sets up five grounds.

(a) He was denied a fair and impartial trial by reason of the Court's partisan conduct as displayed in the course of the hearing which resulted in his conviction;

Of course, that ground is wholly without fact or support in law. The defendant had a fair trial and was convicted.

(b) He was subjected to admission in evidence, and to its consideration by the court as evidence, of a so-called confession written out by one of the arresting officers in the case;

The so-called confession or admission was offered in evidence and received without objection. There was no question about whether it was voluntarily made. The defendant himself testified that he voluntarily made it; that he agreed to everything in it but he denied the truth of certain things contained in the said so-called admission or confession. The law is clear under the evidence received prior to the reception of this so-called admission or confession. The Court was, under the law, justified in receiving it in evidence. The fact that the defendant subsequently denied some matters contained in the written admission or

confession were true, is a matter to be passed upon by the trier of the facts, but the matter of the confession was received wholly in accordance with the adjudicated decision of this state and was properly received and that ground is without merit.

(c) The court failed to question the voluntary or involuntary character of defendant's signing of the alleged confession, sua sponte.

This is denied for the same reason.

II. Because the court fell into serious error, in misstating the law of this State, with reference to voluntary intoxication.

The Court having examined the brief and argument voluntary intoxication is generally not an excuse for a crime; that if intoxication is of such extent that the defendant cannot form a specific intent included in the criminal statute, that would be a defense. The Court's statement was strictly within the rulings of the Supreme Court of this state. That ground is without merit.

III. Because the verdict of the Court sitting without a jury is against the great weight of evidence.

Examination of the record in this case would show that ground is without merit.

The Court in giving his verdict stated in substance that during the past week, is of the opinion that all the grounds set up in the motion for a new trial are wholly without merit under law or fact and the motion for a new trial will be denied.

STATE OF MICHIGAN }
COUNTY OF MONROE } ss

I, Virginia Johnson, a Notary Public in and for the County of Monroe, Michigan hereby certify that the foregoing proceedings were taken by me in the aforementioned cause; that the same were transcribed by me from my shorthand notes; and I further certify that the said transcript is a true and correct transcript of said notes.

/s/ Virginia Johnson
Virginia Johnson

APPENDIX "B"

Order of the Trial Court Denying Motion for New Trial

At a session of said Court held in the Court House in the City of Monroe, Monroe County, Michigan on May 25, 1956.

PRESENT: Honorable Clayton C. Golden
Circuit Court Judge

On reading the motion of James A. Jameson for a new trial and the same having been duly brought on to be heard, after listening to the argument of James A. Jameson and considering the brief submitted, and the Court being fully advised in the premises, and having stated the reasons for denial in detail in the record.

IT IS ORDERED that said motion for new trial be and the same is hereby denied.

/s/ Clayton C. Golden
Clayton C. Golden
Circuit Court Judge

CERTIFICATE

I, Clayton C. Golden, Judge of the Circuit Court for the County of Monroe, before whom the above-entitled cause was tried on April 24, 1956,

Do Hereby Certify, That after due notice I have settled the foregoing as a concise statement of facts in support of an application for leave to appeal, and I further certify that said statement fairly presents the questions for review in said cause.

/s/ Clayton C. Golden,
Circuit Judge.

Dated:
Monroe, Michigan
June 22, 1956

DEC 2 1 1956

JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 581

JOSEPH ROLLINS,
Petitioner,

vs.

STATE OF MICHIGAN,
Respondent

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE ALLOWANCE OF PETITION FOR WRIT OF CERTIORARI

JAMES A. JAMESON,
Solicitor for Joseph Rollins,
Petitioner,
1216 Beaubien Street,
Detroit 26, Michigan.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

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JOSEPH ROLLINS,
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STATE OF MICHIGAN,
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PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE ALLOWANCE OF PETITION FOR WRIT OF CERTIORARI

Now comes Joseph Rollins, petitioner, by James A. Jameson, his attorney, and, Replying to respondent's Brief in Opposition to the Allowance of Petition for Writ of Certiorari, Shows:

I.

Jurisdiction of the Federal Supreme Court, Contrary to Respondent's Contention, citing:

Dixon v. Duffy, 1951, 96 L. Ed. Ad., 20, at 21;
Dixon v. Duffy, 1952, 97 L. Ed. Ad., 137 at 139;
Williams v. Georgia, 1955, 99 L. Ed. Ad., 703 at 709, 710;

pointing out to the Court, specially, that inasmuch as Michigan is the only major State in the Union, which has no "*Intermediate Appellate Court*", * * * *Wisconsin Pipe Line Co. v. Calvert*, 347 U. S. 157,—respondent's chief reliance,—has no possible application, see:

Ellis v. Dixon, 1955, 99 L. Ed. Ad., 754-755;

and, particularly the fact, that, respondent, has been most careful in its failure, to claim that this Court, has no Jurisdiction under the very Statute (Judicial Code, Section 237 (b), 28 U. S. C. A., Section 344 (b); 28 U. S. C., Section 1257 (3)) invoked; and, claimed from its clear language, expressly to confer Jurisdiction. Citation by respondent of the case of *People v. Stanley*, 344 Mich. 530, tends only to substantiate a highly pertinent statement made by petitioner, to the effect,

> "* * * that Michigan, just as most States of the Union, has no Constitutional or Statutory Provisions, by which a citizen may expressly challenge, as of right, a conviction obtained, in violation of the Constitution of the United States, * * *." (Petition for Writ of Certiorari, pp. 4, 5);

and, at the same time, to fly in the face of postulate observations made a moment ago, in *Williams v. Georgia*, 1955, 99 L. Ed. Ad., 703, at 709, 710; petitioner, having seduously followed—step by step—every prescribed method provided by the State, for the enforcement of rights guaranteed by the Fourteenth Amendment.

II.

That Respondent's "*Counter-Statement of Questions to be Presented*", Presents Nothing that is Decisive of this Court's Jurisdiction, or of the Questions Actually Involved as, in this Case, the Michigan Supreme Court, was Under Obligation to Decide Whether Petitioner's Federal Rights had been Violated: and, Contrary to Respondent's Bare Assertion, Unsupported by the Record, Petitioner Presented no Question Involving the Construction of Local Court Rules or Statutes.

III.

That the State Statute *(Section 750.110, Michigan Compiled Laws of 1948)* cited by Respondent, was not Involved Below; Neither is it Involved in this Court.

IV.

That the "*Issues Raised in State Court*", or Courts, were Timely at every Stage (Appendix, 2a; 8a; 55a; 56a; 57a; see Rule 60 and Rule 72 of the Michigan Court Rules).

V.

That Respondent's "*Concise Statement of the Case*", is not only Incorrect or Inaccurate, but Attempts to Set up its Own Version of Facts which have no Foundation in the Record.

VI.

That Respondent's "*Argument*" in Respect to the Order of the Supreme Court of Michigan "* * * denying leave to appeal * * *" not being "* * * an opinion of that Court deciding substantial federal questions contrary to applicable decisions of this Court",—

actually is at war with, and runs squarely foul of, "*applicable decisions of this Court;*" please see cases cited in Paragraph I of this Reply. Certainly, respondent cannot

be serious, in citing *"Michigan-Wisconsin Pipe Line Co. v. Calvert, et al.,* 347 U. S. 157," as authority for the unique or novel, position, which it assumes: absent, the existence in Michigan of a judicial system similar either to that of Texas, or Louisiana; the reasoning of Mr. Justice Holmes, in respect of procedure under the Louisiana judicial system (*American R. Express Co. v. Levee,* 1923, 263 U. S. 19, 68 L. Ed. 140, 44 S. Ct. 11), having been pivoted on the nature of the system itself, and not upon one even similar to that of Michigan. What respondent attempts to demonstrate, therefore, ignores entirely the language of 28 U. S. C., Section 1257 (3), which reads:

> *"Final judgments or decrees rendered by the highest court of a State* in which a *decision could be had,* * * **"

(see, lucid observations of Mr. Justice Roberts, in *Betts v. Brady,* 1942, 62 S. Ct. 1252 at 1254, 1255, 1256);

and, especially the duty enjoined on both Courts below, to guard and enforce every right secured by the Constitution of the United States; see *Robb v. Connally,* 4 S. Ct. 544, and *Mooney v. Holohan,* 55 S. Ct. 340. Michigan has no *"Intermediate Appellate Court";* and so, we naturally are unable to see just what possible application, *Michigan-Wisconsin Pipe Line,* can have to the present Petition for Certiorari, when, in fact and in law, the Highest Court of the State, for all practical purposes, is the *"Michigan Supreme Court":* the Court to which petitioner addressed his grievances in the second instance upon the refusal of an *"Inferior Court"* to entertain them in the first, (*Petition for Writ of Certiorari,* p. 2; pp. 4, 5).

The citation in respondent's *"Argument"*, of the *"Herndon Case"* (*Herndon v. Georgia,* 295 U. S. 441), constitutes

no authority against the procedure followed in the instant case: as, under Georgia law, Herndon could have raised the same questions as were raised on Petition for Rehearing in the Georgia Supreme Court, in an Extraordinary Motion, see *Williams v. Georgia, supra;* or, on Habeas Corpus, (*Frank v. Mangum,* 1914, 355 S. Ct. 582, cf. *Downer v. Dunaway,* 1932, 62 F. 2d, 589). Furthermore, respondent here, has assumed, contrary to the Record *(Appendix, 2a),* that the Motion for New Trial, does not on its face expressly raise a substantial Federal question; sidestepping the fact that such Federal question was so raised on the face of the Application for Leave to Appeal *(Appendix, 8a).* Respondent's attempt to raise the present case to the level of Herndon, ignores the successive steps taken by petitioner under State Statutes and Rules in an unsuccessful attempt to have Federal rights vindicated. The whole gist of respondent's *"Argument" (at 4 and 5 of its Brief),* is set at naught by the following from *Stroble v. California,* 1952, 96 L. Ed. Ad., 529, at 536,

> "This Court has frequently stated that, when faced with the question whether there has been a violation of the Due Process Clause of the Fourteenth Amendment by the introduction of an involuntary confession, it must make an independent determination on the undisputed facts. *Malinski v. New York, supra* (324 U. S. at 404, 89 L. ed. 1032, 65 S. Ct. 781), and cases cited; id., at 438, 89 L. ed. 1050 (dissenting opinion)." * * *.

and, especially by the following from *Gallegos v. Nebraska,* 1951, 96 L. Ed. Ad., 82, at 86, 87,

> "While our conclusion on due process does not necessarily follow the ultimate determinations of judges or juries as to the voluntary character of a defendant's statements prior to trial, the better opportunity afforded those state agencies to ap-

praise the weight of the evidence, because the witnesses gave it personally before them, leads us to accept their judgment insofar as facts upon which conclusions must be reached are in dispute. The state's ultimate conclusion on guilt is examined from the due process standpoint in the light of facts undisputed by the state. That means not only admitted facts but also those than can be classified from the record as without substantial challenge.

As this Court has been entrusted with power to interpret and apply our Constitution to the protection of the right of an accused to federal due process in state criminal trials, the proper performance of that duty requires us to examine, in cases before us, such undisputed facts as form the basis of a state court's denial of that right. *Kansas City Southern R. Co. v. C. H. Albers Com. Co.,* 223 U. S. 573, 591, 56 L. ed. 556, 565, 32 S. Ct. 316; *Norris v. Alabama,* 294 U. S. 587, 594, 79 L. ed. 1074, 1079, 55 S. Ct. 579; *Watts v. Indiana,* 338 U. S. 49, 51, 93 L. ed. 1801, 1804, 69 St. Ct. 1347, 1357. A contrary rule would deny to the Federal Government ultimate authority to redress a violation of constitutional rights. As states courts also are charged with applying constitutional standards of due process, in recognition of their superior opportunity to appraise conflicting testimony, we give deference to their conclusions on disputed and essential issues of what actually happened. See note 2, *supra.*"

In view of the Revised Rules of this Court; in view of the fact that certain Local Statutes and Rules were quoted in the Petition for Certiorari only for the purpose of showing that petitioner had attempted to follow and adhere to Orderly Procedure of the State pertaining to Criminal Cases, it is indeed extremely difficult to understand respondent's insistence *(Brief,* p. 6), that the State Supreme Court, was asked to Construe such Statutes and Rules, when no such

thing was asked in fact; and cannot, therefore, possibly involve any question of law for this Court's determination; so what is the purpose for respondent's quoting at page 6 of its Brief, from the case of *Greenbaugh v. Tax Assessors,* 331 U. S. 486, 487? Moreover, what useful purpose is served by respondent's Reference *(B., p. 5)* to the Trial Court's Opinion when, in Truth, no Dispute is made with Respect to Facts Alleged in the Petition for Certiorari? Respondent has seen fit to Leave the Essential Facts Standing Uncontradicted. Why?

CONCLUSION

From the foregoing, we reach the Conclusion, that Respondent's Brief, in Opposition is not well made; and that, accordingly, this Honorable Court should Allow its Writ of Ceriorari to Issue to the Supreme Court of the State of Michigan.

Respectfully submitted,

JAMES A. JAMESON,
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Detroit 26, Michigan.

Dated: December 19, 1956.